



The Comptroller General
of the United States

Washington, D.C. 20548

Cunningham

Decision

Matter of: Miller Gove Travel Associates--Request
for Reconsideration

File: B-236069.2

Date: August 16, 1989

DIGEST

Request for reconsideration of prior decision dismissing protest as untimely because protest was filed more than 10 working days after basis of protest was known is denied. Fact that within 10 working days of date basis of protest was known protester also filed a protest with General Services Board of Contract Appeals, which dismissed protest as not involving a matter within its jurisdiction, does not toll the time for filing with General Accounting Office.

DECISION

Miller Gove Travel Associates has requested reconsideration of our decision of July 24, 1989,^{1/} in which we dismissed the company's protest under request for proposals (RFP) No. 9FBG-OLE-A-A0929189 as untimely filed under § 21.2(a) of our Bid Protest Regulations (4 C.F.R. Part 21 (1988)). The RFP was issued in April 1989 by the General Services Administration (GSA) for travel services for Alameda County, California. GSA refused to consider Miller Gove's proposal since it was submitted at 3 p.m. on June 15, 1989, an hour after the scheduled closing time of 2 p.m.

We deny the request for reconsideration.

In its protest, Miller Gove contended that GSA was barred from rejecting its proposal as late since Miller Gove's copy of RFP amendment No. 0001 did not change the 3 p.m. closing time set forth in the RFP. GSA's copies of the same amendment showed that it moved the closing time forward to 2 p.m.

^{1/} Miller Gove Travel Assocs., B-236069, July 24, 1989, 89-2 CPD ¶ ____.

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We concluded that its protest to our Office was untimely filed because Miller Gove was aware of the basis of its protest against the rejection of its proposal no later than 3 p.m. on June 15, yet Miller Gove did not file its protest with our Office until July 5, 1989, or more than the 10 working days allowed by our Bid Protest Regulations.

On reconsideration, Miller Gove now alleges that, pursuant to advice from GSA's contracting officers, the company did file a protest on June 27 (within 10 working days of June 15) with the GSA Board of Contract Appeals (GSBCA), but that the GSBCA subsequently allowed Miller Gove to withdraw its protest on July 10, since the GSBCA "did not handle these matters." Miller Gove argues that because GSA's contracting officers allegedly advised it to pursue its protest with the GSBCA, rather than with our Office, we should not have dismissed its protest as untimely filed.

The Competition in Contracting Act of 1984, 31 U.S.C. § 3551, et seq. (Supp. IV 1986), which gives our Office and the GSBCA authority to decide bid protests, specifically states that the GSBCA shall hear only protests concerning the procurement of automated data processing (ADP) equipment or services, while our Office's jurisdiction includes all other protests as well. See 31 U.S.C. § 3552; 40 U.S.C. § 759(f). In addition, our Bid Protest Regulations state that while we will consider protests of solicitations issued by federal agencies for property or services generally, the GSBCA will consider only protests of solicitations of automated data processing equipment and services. See 4 C.F.R. § 21.1 and 21.3(m)(6). Further, since our regulations are published in the Federal Register, protesters are charged with constructive notice of their contents. Milwaukee Indus. Clinics, S.C.--Recon., 65 Comp. Gen. 17 (1985), 85-2 CPD ¶ 426.

It is clear, therefore, that notwithstanding the alleged erroneous advice given to Miller Gove, it was at least on constructive notice to file its protest concerning this non-ADP RFP with our Office by June 29 rather than with the GSBCA, and that the company's filing with the GSBCA did not toll the time for filing with our Office. See Sho-Ge, Inc., B-234772, Mar. 24, 1989, 89-1 CPD ¶ 303; Coastal Indus., Inc.--Recon., B-223158.2, June 30, 1986, 86-2 CPD ¶ 20.

Consequently, Miller Gove's July 5 protest to our Office must be considered to have been untimely filed with our Office and was properly dismissed. We therefore deny the request for consideration.

A handwritten signature in cursive script, appearing to read "James F. Hinchman".A handwritten mark consisting of a vertical line and a short horizontal stroke, resembling the initials "JF".

James F. Hinchman
General Counsel